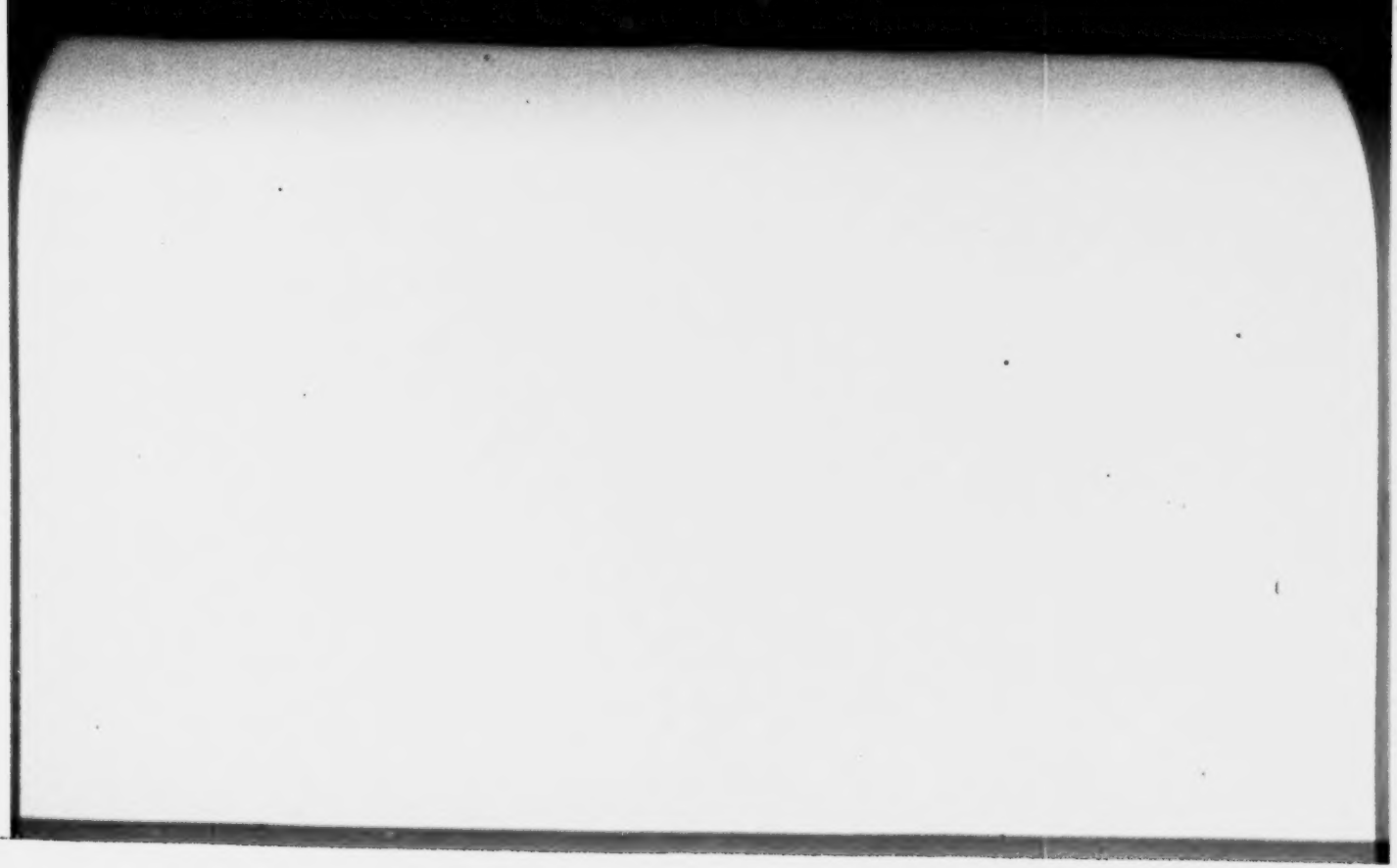

IN THE

SUPREME COURT of the UNITED STATES

OCTOBER TERM, 1900.

FARMERS' LOAN AND TRUST COMPANY

versus

PENN PLATE GLASS COMPANY.

Application of the Penn Plate Glass Company to the Court to advance the above-entitled case for Argument.

This case is brought into this Court by Writ of *Certiorari*, issued to the Circuit Court of Appeals for the 3d District.

The Writ was issued in November, 1900, notwithstanding the earnest opposition of the Penn Plate Glass Co.

The Penn Plate Glass Company (hereinafter called the Penn Company), now most respectfully asks the Court to advance the case for Argument on such early day in the October Term, 1901, as the Court may see fit to name, and it now states briefly the reasons for its Application.

(1.)

The origin of the case was a Bill in Equity filed by the Trust Company in the Circuit Court for the Western District of Pennsylvania, to foreclose a mortgage, as long

ago as July 8, 1896, upon the Real Estate and Glass Manufacturing Plant, the Equity of Redemption in which, at that time, belonged to the Penn Plate Glass Company, but which, at the date of the mortgage, (July 1, 1891), belonged to the *Pennsylvania* Plate Glass Company. The mortgage was given to secure $250,000 of mortgage bonds, the Trustee under the mortgage being the above-mentioned Trust Company. After the Bill was filed, answers were put in making defences to the foreclosure, and making further defences attacking the validity of a portion of the mortgage bonds. While these proceedings were pending, a fire, which took place in April, 1898, almost entirely destroyed the whole manufacturing plant.

When the Penn Plate Glass Company acquired the property, it procured insurance on the Equity of Redemption in a large number of Insurance Companies, the whole amount of insurance aggregating $450,000. In each one of the Policies it was expressly stated that the insurance was only on the Equity of Redemption and not upon the interest of the mortgagee. Upon the occurrence of the fire, a Supplemental Bill was filed by the Trust Company against the original defendants, to which also the insurance companies were made parties, in which Bill the Trust Company claimed an Equitable Lien on the insurance money for the benefit of the mortgage bondholders. Some time thereafter, Mr. Emmanuel Wertheimer, who was one of the largest stockholders of the Penn Company, and the holder of $160,000 of the mortgage bonds, was appointed Receiver in the case to collect the insurance money and to hold $125,000 for the benefit of the remaining ninety of the mortgage bonds, in the event that it should be determined that the mortgage bonds had any title to the insurance money, he (Mr. Wertheimer) stipulating that the 160 bonds held by him should not participate in the insurance money. All of the insurance money except the $125,000 was paid over to the Penn Company.

Upon February 24, 1899, the District Judge filed an Opinion to the effect that the Trustee under the mortgage had an Equitable Lien upon the insurance money, and overruling all the defences made to the foreclosure of the mortgage. Upon July 25, 1899, a final Decree was entered in the Circuit Court for the Western District of Pennsylvania, fixing the amount of the mortgage indebtedness due, ordering a foreclosure of the mortgage for its payment, ascertaining that the mortgage property was not sufficient to pay this mortgage indebtedness, and ordering the Receiver to apply so much of the $125,000 as should be necessary to pay in full such of the 90 bonds as should thereafter be held to be valid bonds, after crediting these bonds with their pro rata share of the proceeds of sale of the mortgage property.

(2.)

From so much of this Decree as awarded an Equitable Lien on the Insurance money in favor of the bonds, the Penn Company appealed to the Circuit Court of Appeals for the Third District.

This appeal came on to be argued in that Court in October, 1899; and after it was argued the case was held *sub curia* until the spring of 1900, when a reargument was ordered, and the case having been again reargued was decided in favor of the Penn Company on June 14, 1900, the Court reversing the decree of the Court below and decided that there was no equitable lien upon the insurance money in favor of the bonds, but that the Penn Company was entitled to the whole of the insurance money.

(3.)

It was to bring up this Decree of the Circuit Court of Appeals, that the Writ of *Certiorari* was granted by the Supreme Court of the United States.

(4.)

The $125,000, which has thus been in the hands of the Receiver since the Spring of 1898, and therefore bearing no interest, (and in connection with which the Receiver was required to give bond to the Surety Company, which costs those interested in the fund $900 a year), must, unless this case is advanced, so remain for a long time yet to come. Since the decision of the case by the Circuit Court of Appeals, 28 of the 90 bonds for whose benefit the $125,000 was decreed by the Circuit Court to be held (this being reversed by the Circuit Court of Appeals) have been found by the Master not to be entitled to share in the $125,000. It would thus appear that while the case is undetermined in this Court, the $125,000, which, if the Decree of the Circuit Court of Appeals is right, belongs to the Penn Company, is withheld from it, and bears no interest, for the possible benefit of 62 of the mortgage bonds.

Since the decision of the case by the Circuit Court of Appeals, the mortgaged property has been sold, and it is of great importance to the Penn Company that it should be enabled to wind up its affairs; but this can not be done until there is a decision by this Court of the pending case.

It is respectfully submitted, that as this Court exercised the extraordinary remedy of *certiorari*, and so has prevented the receipt by the Penn Company of the above-mentioned $125,000, a portion of the insurance placed by it on its Equity of Redemption in the mortgage property, (the policies expressly declaring that the insurance *was not for the benefit of the mortgagee*), and to which money, by the Decree of the Circuit Court of Appeals, it is entitled; and inasmuch as very great delay has already occurred in connection with the Argument and re-argument in the Circuit Court of Appeals; and as the necessary further delay

which will occur, if this case is not heard before it is reached in regular course, will be a serious detriment to the Penn Company, and those interested in its affairs, that Company hereby respectfully asks that this Court may be pleased to grant its Application.

All of which is respectfully submitted.

BERNARD CARTER,
S. SCHOYER, JR.,
S. B. SCHOYER,
Of Counsel for Penn Plate Glass Co.